1960 No. 1275 (L. 14)

The County Court (Amendment) Rules, 1960

Made - - - -	*25th July*, 1960
Coming into Operation	
Rules 11 (1) (2) (3), 12 (1)	*10th August*, 1960
Remainder - -	*1st November*, 1960

1.—(1) These Rules may be cited as the County Court (Amendment) Rules, 1960.

(2) An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1936(a), as amended.

(3) In these Rules Appendices A, B and D mean respectively Appendices A, B and D to the County Court Rules, 1936.

(4) A Form referred to by number in these Rules means the Form so numbered in Appendix A.

2. Order 3 shall be amended as follows:—

(1) In Rule 2 for the words "person of unsound mind not so found by inquisition" and "person of unsound mind" in paragraph (1) there shall be substituted the words "mental patient" and for the word "infant" in paragraph (3) there shall be substituted the words "person under disability".

(2) In Rule 3 for the words "the written authority for the use of the name of the next friend" there shall be substituted the words "the next friend's written consent to be next friend".

3. Order 5 shall be amended as follows:—

(1) The following Rules shall be substituted for Rules 11 and 12:—

Person under disability to have next friend or guardian

"11. Subject to section 80 of the Act, a person under disability may not sue except by his next friend and may not defend except by his guardian *ad litem*.

Next friend or guardian *ad litem* authorised by Court of Protection

7 & 8 Eliz. 2. c. 72.

12. Where a person is authorised under Part VIII of the Mental Health Act, 1959, to conduct legal proceedings in the name of a mental patient or on his behalf, that person shall be entitled to be next friend or to be appointed guardian *ad litem*, as the case may be, of the mental patient in any proceedings to which his authority extends, unless in the case of a guardian *ad litem* some other person is appointed by the court under paragraph (*c*) of Rule 13 of this Order."

(2) Rule 13 shall be amended as follows:—

(*a*) For the words "an infant or a person of unsound mind not so found by inquisition" there shall be substituted the words "a person under disability".

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(*b*) For the words "the infant or person of unsound mind", wherever they appear, there shall be substituted the words "the person under disability".

(*c*) At the end of paragraph (*a*) there shall be added the words "and, where he is authorised under Part VIII of the Mental Health Act, 1959, to defend the proceedings on behalf of the person under disability, being a mental patient, an office copy, sealed with the official seal of the Court of Protection, of the order or other authorisation made or given under the said Part VIII by virtue of which he is so authorised".

(*d*) In sub-paragraph (iii) of paragraph (*c*) for the words from "be served on or left at" to "the last mentioned service" there shall be substituted the words "be served on the person on whom the summons was required to be served".

(3) Rule 14 shall be amended as follows:—

(*a*) For the words "an infant or a person of unsound mind not so found by inquisition", wherever they appear, there shall be substituted the words "a person under disability".

(*b*) In paragraph (*b*) for the words "an infant or a person of unsound mind" there shall be substituted the words "a person under disability".

(4) In Rules 16 and 17 for the words "an infant or a person of unsound mind not so found by inquisition" there shall be substituted the words "a person under disability".

(5) In Rule 18 for the words "any infant or person of unsound mind not so found by inquisition" there shall be substituted the words "any person under disability".

(6) Rule 19 shall be amended as follows:—

(*a*) In paragraph (1) for the words "an infant or a person of unsound mind" there shall be substituted the words "a person under disability" and for the words "guardian *ad litem* or committee" in sub-paragraph (*b*) there shall be substituted the words "or guardian *ad litem*".

(*b*) In paragraph (5) for the words "an infant or a person of unsound mind" there shall be substituted the words "a person under disability".

(*c*) In paragraph (6) for the words "the infant or person of unsound mind" there shall be substituted the words "the person under disability".

(7) The following Rule shall be substituted for Rule 20:—

Authority of next friend or guardian *ad litem*.

"20. Subject to the provisions of these Rules, any thing which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings may, if the party is a person under disability, be done by his next friend or guardian *ad litem*."

4. In paragraph (2) of Rule 2 of Order 6 for the words "an infant or a person of unsound mind" in sub-paragraph (*b*) there shall be substituted the words "a person under disability".

5. In paragraph (1) of Rule 9 of Order 7, for the figure "2" in sub-paragraph (*b*) there shall be substituted the figure "5".

6. The following Rule shall be substituted for Rules 12 and 13 of Order 8:—

Person under disability.

"12.—(1) Where a defendant is a person under disability, an ordinary summons shall be served—

(*a*) in the case of an infant who is not also a mental patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(*b*) in the case of a mental patient, on the person (if any) who is authorised under Part VIII of the Mental Health Act, 1959, to conduct in the name of the mental patient or on his behalf the proceedings in connection with which the summons is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is.

(2) Notwithstanding anything in the foregoing paragraph, the court may order that any summons which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability."

7. In paragraph (6) of Rule 4 of Order 9, for the figure "3" in sub-paragraph (*b*) there shall be substituted the figure "5".

8. Order 11 shall be amended as follows:—

(1) Rules 2, 3, 4, 5, 6 and 7 shall be renumbered and shall stand as Rules 1, 2, 3, 4, 5 and 6 respectively.

(2) The following Rule shall be substituted for the existing Rule 1 and shall stand as Rule 7:—

Payment with costs within 8 days of service.

"7.—(1) The provisions of this Rule shall have effect where the only relief claimed in an action is the payment of money and the defendant, within 8 days of the service of the summons on him inclusive of the day of service, pays money into court in satisfaction of the claim.

(2) Where the amount paid into court is the whole amount of the claim, together with the costs stated on the summons, the action shall be stayed and the defendant shall not be liable for any further costs unless the court otherwise orders.

(3) Where an amount less than the claim is paid into court, together with the costs which would be entered on a summons for that amount under Part I of Appendix D, and the plaintiff elects to accept that amount in satisfaction of his claim—

(*a*) he shall within 4 days after receipt by him of notice of payment into court deliver or send by prepaid post to the registrar and to every defendant a notice of acceptance;

(*b*) on receipt by the registrar of the notice of acceptance the action shall be stayed; and

(*c*) the defendant shall not be liable for any further costs unless the court otherwise orders.

(4) Except in a case to which Rule 10 of this Order applies, the plaintiff shall be entitled to have money paid into court

under paragraph (2) of this Rule, or money paid into court under paragraph (3) and accepted by him within the time prescribed by that paragraph, paid out to him without an order of the court.

(5) This Rule shall not apply where the plaintiff is a person under disability."

(3) In the existing Rules 4 and 6 for the words "Rule 2" there shall be substituted the words "Rule 1".

(4) In Rule 8 for the words "Rule 1 (1) (*a*) of this Order" there shall be substituted the words "the last preceding Rule".

(5) In Rule 9 for the words "Rule 1 (1) (*b*)" there shall be substituted the words "Rule 7".

(6) In Rule 11 for the words "Rule 1" there shall be substituted the words "Rule 7".

(7) In Rule 12 for the words "Rule 2" there shall be substituted the words "Rule 1".

(8) In Rule 14 for the words "Rules 2 to 12" there shall be substituted the words "Rules 1 to 6 and 8 to 12".

(9) In Rule 15 for the words from "no statement of the fact" to "the amount of payment" there shall be substituted the words "no statement of the fact that money has been paid into court shall be contained in the pleadings or inserted in the documents for the use of the court at the trial, and no communication of that fact shall be made to the court at the trial until all questions of liability and amount of debt or damages have been decided, but the court shall, in exercising its discretion as to costs, take into account both the fact that money has been paid into court and the amount of the payment".

9. The following Rule shall be substituted for Rule 12 of Order 14:—

Person under disability.

"12. This Order shall apply to a person under disability and to his next friend or guardian *ad litem*."

10. In the proviso to Rule 1 of Order 15 the words "or committee" shall be omitted.

11. Order 16 shall be amended as follows:—

(1) In paragraph (1) of Rule 1 after the word "judge" there shall be inserted the words "or registrar".

(2) In Rule 4 after the word "judge" there shall be inserted the words "or registrar".

(3) In paragraph (1) of Rule 6 after the word "judge" there shall be inserted the words "or, as the case may be, the registrar".

(4) In paragraph (1) of Rule 13 the word "committee" shall be omitted.

(5) In Rule 15 the word "committee" shall be omitted.

12. Order 25 shall be amended as follows:—

(1) At the beginning of paragraph (3) of Rule 8 there shall be inserted the words "Except as provided in paragraph (2)".

(2) In Rule 48 there shall be added at the end of paragraph (4) the words "but any application or appeal under any of the provisions of Order 37 shall be made to the court in which the judgment or order was given or made".

13. Rule 7 of Order 41 shall be revoked.

14. Order 46 shall be amended as follows:—

(1) Rule 1 shall be amended as follows:—

(*a*) In the heading for the words "*Guardianship of Infants Act*, 1925" there shall be substituted the words "*Guardianship of Infants Acts*, 1886 *and* 1925".

(*b*) The existing Rule shall stand as paragraph (2) of the Rule and the following new paragraph shall be inserted at the beginning and shall stand as paragraph (1):—

"(1) All proceedings under the Guardianship of Infants Acts, 1886 and 1925, shall be heard and determined in chambers unless the court otherwise directs."

(*c*) In paragraph (2) for the words "Guardianship of Infants Act, 1925" there shall be substituted the words "said Act of 1925".

(2) The following Rule shall be substituted for Rule 9:—

Marriage Act, 1949

12, 13 & 14 Geo. 6. c. 76.

"9.—(1) Every application under section 3 of the Marriage Act, 1949, for the consent of the court to the marriage of an infant shall be heard and determined in chambers unless the court otherwise directs.

(2) The application may be heard and determined by the registrar.

(3) A copy of the application and a notice in Form 26 shall, not less than 7 clear days before the day fixed for the hearing, be served on every person whose consent is required to the marriage and who has refused his consent.

(4) Notwithstanding the provisions of Rule 2 of Order 3 it shall not be necessary for the application to be made by the applicant's next friend unless the court so directs."

(3) In paragraph (1) of Rule 11 there shall be added at the end of sub-paragraph (*a*) the words "and accordingly the notice in Form 26 which is served on the respondent pursuant to Order 6, Rule 4 (2) (*c*), shall contain a notice in Form 395 requiring the respondent to file an answer."

(4) The following Rule shall be added after Rule 17:—

Mental Health Act, 1959

"18.—(1) In this Rule—

7 & 8 Eliz. 2. c. 72.

"the Act" means the Mental Health Act, 1959;

a section referred to by number means the section so numbered in the Act;

"place of residence" means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution;

"hospital authority" means a Regional Hospital Board or the managers of a hospital as defined in section 147 (1).

(2) An application to a county court under Part IV of the Act shall be made by originating application.

(3) The application shall be filed in the court for the district in which the patient's place of residence is situated or, in the

case of an application made under section 53 for the discharge or variation of an order made under section 52, in that court or in the court which made the order.

(4) Where an application is made under section 52 for an order that the functions of the nearest relative of the patient shall be exercisable by some other person—

(*a*) the nearest relative shall be made a respondent to the application unless the application is made on the ground set out in subsection (3) (*a*) of the said section or the court otherwise orders; and

(*b*) the court may order that any other person, not being the patient, shall be made a respondent.

(5) On the hearing of the application the court may accept as *prima facie* evidence of the facts stated therein any report made by a medical practitioner and any report made in the course of his official duties by—

(*a*) a probation officer, or

(*b*) an officer of a local authority or of a voluntary organisation exercising statutory functions on behalf of a local authority, or

(*c*) an officer of a hospital authority:

Provided that the respondent shall be told the substance of any part of the report bearing on his fitness or conduct which the judge considers to be material to the manner in which the application should be dealt with.

(6) Unless otherwise ordered, an application under the said Part IV shall be heard and determined in chambers.

(7) For the purpose of determining the application the judge may interview the patient, either in the presence of or separately from the parties and either at the court or elsewhere, or may direct the registrar to interview the patient and report to the judge in writing."

15. Order 47 shall be amended as follows:—

(1) Rule 5 shall be amended as follows:—

(*a*) In paragraph (1) the words "other than court fees" shall be omitted.

(*b*) The following new paragraph shall be added at the end of the Rule:—

"(4) In addition to the disbursements shown in the scales the appropriate court fees shall be allowable."

(2) In Rule 18 paragraph (2) and the figure "(1)" at the beginning of paragraph (1) shall be omitted.

16. Rule 18 of Order 48 shall be amended as follows:—

(1) For sub-paragraph (i) of paragraph (*a*) there shall be substituted the following paragraph:—

"(i) by an insurance company, group of underwriters or bank approved by the Lord Chancellor, or".

(2) In paragraph (*b*) for the words "or group of underwriters" there shall be substituted the words ", group of underwriters or bank".

17. Rule 2 of Order 49 shall be amended as follows:—

(1) The following definition shall be inserted after the definition of "Judgment":—

"'Mental patient' means a person who, by reason of mental disorder within the meaning of the Mental Health Act, 1959, is incapable of managing and administering his property and affairs."

(2) The following definition shall be inserted after the definition of "Originating process":—

"'Person under disability' means a person who is an infant or a mental patient."

18. In Form 10 for the words "an infant or a person of unsound mind" there shall be substituted the words "a person under disability".

19. Form 12 shall be amended as follows:—

(1) In the title for the word "Infant" there shall be substituted the words "Person under Disability".

(2) For the words "who is an Infant" there shall be substituted the words "who is an Infant [*or* a Mental Patient]".

20. Forms 18, 19 and 22 shall be amended as follows:—

(1) The words "(Costs may be increased if payment not made within the time stated below.)" shall be omitted.

(2) In paragraph (1) of the Instructions after the first sentence there shall be inserted the following sentence:—"If you do this and the payment satisfies the claim, you will not be liable for any further costs unless the Court otherwise orders."

21. In the side note to Form 20A, for the words "Rule 3 (2) (*b*)" there shall be substituted the words "Rule 3 (2) (*c*)".

22. Form 45 shall be amended as follows:—

(1) In the title for the words "Infant or Person of Unsound Mind" there shall be substituted the words "Person under Disability".

(2) In paragraph 2 for the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

(3) The following paragraphs shall be substituted for paragraph 3:—

"3. is a fit and proper person to act as guardian *ad litem* of the said defendant and has no interest in the matters in question in this action [*or* matter] adverse to that of the said defendant [*add where the said defendant is a mental patient*, and there is no person authorised under Part VIII of the Mental Health Act, 1959, to conduct the proceedings in this action [*or* matter] in the name of the said defendant or on his behalf].

[*or* is authorised under Part VIII of the Mental Health Act, 1959, to conduct the proceedings in this action [*or* matter] on behalf of the said defendant, as appears from the office copy of the order or authorisation of the Court of Protection which is hereunto annexed and marked 'A'.]

4. The consent of the said to act as guardian *ad litem* of the said defendant is appended hereto."

(4) In the final paragraph for the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

23. Form 46 shall be amended as follows:—

(1) After the words "and the consent" there shall be inserted the words "[and the order [*or* authorisation] of the Court of Protection]".

(2) For the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

24. In Form 47 for the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

25. Form 48 shall be amended as follows:—

(1) In the title for the words "Infant or Person of Unsound Mind" there shall be substituted the words "Person under Disability".

(2) For the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

26. Form 49 shall be amended as follows:—

(1) In the title for the words "an Infant or a Person of Unsound Mind" there shall be substituted the words "a Person under Disability".

(2) For the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

(3) The words "*and to* *the Father* [or *Guardian*] *of the said* " shall be omitted.

27. In Form 50 for the words "[*or* a person of unsound mind not so found by inquisition]", wherever they appear, there shall be substituted the words "[*or* a mental patient]".

28. In Form 51 for the words "[*or* a person of unsound mind not so found by inquisition]" there shall be substituted the words "[*or* a mental patient]".

29. For the Note to Form 64 there shall be substituted the following new Note:—

"[Note.—When applying for the above amount at the Court Office, you must produce the plaint note issued to you on the entry of the plaint. You may, if you wish, request the money to be sent to you by post. Any such request must be accompanied by the plaint note and a stamped addressed envelope.]

30. In each of the marginal notes of Forms 64, 65, 66 and 69 for the words "Rule 7" there shall be substituted the words "Rule 6".

31. The form of receipt at the end of Forms 64, 65 and 142 shall be omitted.

32. In the Instructions on Form 138, the first paragraph and the figure "2" at the beginning of the second paragraph shall be omitted.

33. In the Note to Form 142 for the words from "If you wish" to "a stamped addressed envelope" there shall be substituted the words "You may, if you wish, request the money to be sent to you by post. Any such

request must be accompanied by the plaint note or summons and a stamped addressed envelope."

34. In the Table to Form 158A the words "and costs" in the first entry shall be omitted, and after the first entry there shall be inserted the following new entry :—

"Costs ....."

35. In the Table to Form 158B the words "and costs" in the second entry shall be omitted, and after the second entry there shall be inserted the following new entry :—

"Costs ....."

36. Form 323 shall be amended as follows :—

(1) The following paragraph shall be substituted for paragraph 4 :—

"4. At the date of my birth the said was a spinster [*or* widow] [*or* married to] and was resident at , and the said was a bachelor [*or* widower] [*or* was married to] and was resident at and domiciled in ."

(2) In paragraph 13 after the words "Legitimacy Act, 1926", where they first appear, there shall be inserted the words "[*or* 1959]".

37. In Form 327 paragraph (2) and the figure "(1)" at the beginning of paragraph (1) shall be omitted.

38. In Form 328 after the words "[*or* as from the 1st day of January, 1927, being the date of the commencement of the said Act]", there shall be inserted the words "[*or* as from the 29th day of October, 1959, being the date of the commencement of the Legitimacy Act, 1959]".

39. Form 346 shall be revoked.

40. The following Form shall be added to Appendix A after Form 394 :—

"395

O. 46, r. 11 (1) (*a*). *Notice to Respondent in Application under Section* 17 *of the Married Women's Property Act,* 1882

Within eight days after service of this notice on you, inclusive of the day of service, you must file in the court office an answer, with as many copies as there are other parties to the proceedings, specifying the allegations which you dispute and stating the grounds of your opposition."

41. Scales 2, 3 and 4 in Appendix B shall be amended as follows :—

(1) In the Note to Item 6 for the word "namely" there shall be substituted the word "including" and after the word "correspondence" there shall be inserted the words ", making necessary searches".

(2) In Item 33 the word "and" at the end of paragraph (*a*) shall be omitted and after paragraph (*b*) there shall be inserted the following new paragraph :—

"(*c*) for making any search in the companies register, the business names register or any other public register which in the opinion of the registrar it was reasonably necessary to make for the purpose of the action or matter,".

42. In paragraph 1 (*a*) of Part I of Appendix D for the words "Rule 1" there shall be substituted the words "Rule 7".

43. Notwithstanding anything in Rules 20, 21, 29, 30, 31 and 33 of these Rules, Forms 18, 19, 20A, 22, 64, 65, 66, 69 and 142 may continue to be used in the form hitherto prescribed until the Lord Chancellor otherwise directs.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act, 1959(a), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Alun Pugh.
D. O. McKee.
O. Temple-Morris.
D. Freeman Coutts.
W. Ralph Davies.
H. G. Talbot.
Arthur J. Driver.
W. O. Carter.

I allow these Rules and I direct that Rule 11 (1), (2) and (3) and Rule 12 (1) shall come into force on the 10th day of August, 1960, and the remainder shall come into force on the 1st day of November, 1960.

Kilmuir, C.

Dated the 25th day of July, 1960.

(a) 7 & 8 Eliz. 2. c. 22.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules make amendments to the County Court Rules consequential on the coming into operation of the Mental Health Act, 1959, and also a number of miscellaneous amendments of which the following are the most important:—

(1) The rule that a defendant who satisfies the plaintiff's claim and the fixed costs on the summons within eight days of service is not liable for any further costs, unless the court otherwise orders, is extended so as to apply whether or not he denies liability. It is made clear that the rule does not apply where the plaintiff is a person under disability (Rule 8).

(2) The registrar, as well as the judge, is given power under Order 16, Rules 1 (1) and 4, to transfer proceedings from one county court to another (Rule 11).

(3) The registrar is given power to grant a temporary stay of a warrant of execution issued by another court until an application can be made to the judge (Rule 12).

(4) Where proceedings are transferred to another court for the issue of a judgment summons, any application for a new trial must be made to the court which originally gave judgment (Rule 12).

(5) Proceedings under the Guardianship of Infants Acts, 1886 and 1925, and the Marriage Act, 1949, are to be heard in chambers, and an infant applying for consent to marry need not have a next friend, unless the court otherwise orders (Rule 14).

(6) The cost of a search in any public register will be allowable under Scales 2, 3 and 4 of the scales of costs (Rule 41).